DEFENSE LOGISTICS AGENCY
DEFENSE LOGISTICS SUPPORT COMMAND
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO DLSC-P
PROCLTR 99-02

FEB 05 1999

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Anticompetitive Teaming

The Under Secretary of Defense (Acquisition and Technology) recently issued a memorandum cautioning contracting officers and program managers to consider ways to assure robust competition in developing acquisition strategies (Attachment 1). The increasing use of teaming arrangements by industry requires scrutiny by acquisition personnel to ensure that such arrangements do not inhibit competition on either the contract or subcontract level. For example, a teaming arrangement, where one member of the team would also be an essential subcontractor to other potential competitors, should not be allowed, if the teaming arrangement would preclude such a subcontracting relationship.

This PROCLTR is effective immediately and expires, for record keeping purposes, upon dissemination to contracting personnel.

Our point of contact is Mr. Gregory Ellsworth, DLSC-POA, DSN 427-1369.

William J. Kenny

WILLIAM J. KENNY
Executive Director
Procurement Management

Attachment

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-3010

ACQUISITION AND
TECHNOLOGY

JAN 5 1999

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTENTION: SERVICE ACQUISITION EXECUTIVES
DIRECTORS OF DEFENSE AGENCIES
DIRECTOR, DEFENSE PROCUREMENT

SUBJECT: Anticompetitive Teaming

As a result of the consolidation of the defense industry, increasingly we are seeing exclusive teaming arrangements--both vertical and horizontal--among companies competing for Department of Defense (DoD) business. An exclusive teaming arrangement is created when two or more companies agree--in writing, through "understandings," or by any other means--to team together to pursue a DoD procurement program, and further agree not to team with any other competitors for that program. These teaming arrangements have the potential of resulting in inadequate competition for our contracts. While our preference is to allow the private sector to team and subcontract without DoD involvement, there are circumstances in which we must intervene to assure adequate competition.

In the development of acquisition strategies, program managers and contracting officers should consider ways to assure that we obtain robust competition. At information meetings with potential competitors or in Requests for Proposals, companies should be advised that any pre-established teaming, at either the prime or subcontract level, will be scrutinized for its potential to inhibit competition. If exclusive teaming arrangements are anticompetitive, they can be addressed without a major expenditure of resources or oversight of company practices. For example, in one DoD competition, one company attempted to team exclusively with another company that other potential offerors considered essential for performance. The program office required the dissolution of the arrangement. If a team member has a unique capability that must be included in the system being purchased, DoD can insist that the company make that capability available on equitable terms to all system competitors. On the DD 21 program, exclusive teaming among three companies was rejected by DoD. As a result, two competitive teams--of shipbuilders and integrators--were created by industry. On another program, DoD prevented a sole source situation where, because of its preeminence as a systems engineering contractor for several years, one company had a substantial advantage in a

possible competition. That company was advised it could only compete if it made its expertise available to other contractors, even if it primarily participated on only one "team."

Another technique to provide for adequate competition at the subcontract level for a particular component or subsystem, is to include a "consent to subcontract" clause when a contracting officer considers it necessary. Subpart 44.2 of the Federal Acquisition Regulation (FAR) already permits inclusion of such a provision when certain critical subcontracts require special surveillance. Even when a "consent to subcontract" provision is used, the government should oversee the contractor's source selection process only to assure that a fair competition is conducted, not to act as a surrogate source selection official or to give approval of the selection of a particular source.

Because use of a tailored acquisition strategy or the "consent to subcontract" provision may not always be effective in providing for strong, credible competition in all critical areas, I am also requesting a change to the FAR. This change will add the following to the list of practices at FAR 3.303(c) that may evidence a violation of anti-trust laws: "exclusive teaming arrangements, if one or a combination of the companies participating on the team is the sole provider of a product or service that is essential for contract performance, if efforts to eliminate such arrangements are not successful."

It must be understood that teaming involves significantly different issues than those that arise from mergers and acquisitions, where the government's options may be more limited. With teaming, the government can, on a case by case basis, take a variety of actions in the formulation of acquisition strategies and in regulation to prevent anticompetitive teaming. In this era of downsizing of the defense industry, we must make every effort to achieve robust competition at all contract levels to ensure we continue to obtain the best products at reasonable prices to satisfy defense needs.

J. S. Gansler